

Meilman Food Industries, Inc. and Amalgamated Meat Cutters and Butcher Workmen of North America, Local 304, AFL-CIO. Cases 18-CA-4479 and 18-CA-4859

March 19, 1981

SUPPLEMENTAL DECISION AND ORDER

On February 6, 1978, the National Labor Relations Board issued a Decision and Order¹ against Respondent in which the Board ordered Respondent, *inter alia*, to make whole certain employees named in Appendix A of the Board's Decision and Order and other bargaining unit employees for their losses resulting from Respondent's unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Act. Subsequently, on April 25, 1979, the United States Court of Appeals for the District of Columbia entered its judgment enforcing in full the backpay provision of the Board's Order. A controversy having arisen over the backpay owed the discriminatees, the Regional Director for Region 18 issued and caused to be served on the parties a backpay specification and notice of hearing alleging the amount of backpay due the individual discriminatees. Subsequently, on November 11, 1980, Respondent filed an answer to the backpay specification.

On December 31, 1980, the General Counsel filed with the Board a motion to strike Respondent's answer to the backpay specification as to gross backpay computations and for Summary Judgment on backpay computations. Thereafter on January 7, 1981, the Board issued an order transferring proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. On January 22, 1981, the Respondent filed an answer to the General Counsel's motion to strike Respondent's answer to the backpay specification as to gross backpay computations and for Summary Judgment as to the gross backpay specifications. Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

Section 102.54(b) of the National Labor Relations Board Rules and Regulations, Series 8, as amended, provides in relevant part:

As to all matters within the knowledge of the respondent, including but not limited to the various factors entering into the computation of gross backpay, a general denial shall not suffice. As to such matters, if the respondent

disputes either the accuracy of the figures in the specification or the premises on which they are based, he shall specifically state the basis for his disagreement, setting forth in detail his position as to the applicable premises and furnishing the appropriate supporting figures.

In its motion to strike Respondent's answer to the backpay specification as to the gross backpay computations and for Summary Judgment as to the gross backpay computations, the General Counsel submits, in effect, that paragraphs 2, 3, 4, 7-17, 18-243, 245, 246, 248, 249, and 250 of Respondent's answer constitute general denials that the method and elements involved in the Regional Director's gross backpay computations are correct, that Respondent's answer fails to set forth any alternative formula or figures for any of the gross backpay computations or the elements involved therein, and that the total number of hours worked, rates of pay, vacation benefits, and other applicable fringe benefits available during the backpay period are all matters specifically within the knowledge of Respondent. He, therefore, moves that the Board strike Respondent's answer to the backpay specification of gross backpay, for summary judgment as to the computation of gross backpay and that the Board order that the backpay hearing herein be limited to a determination of the interim earnings of the discriminatees, which has been raised by Respondent as an affirmative defense.

Respondent, in both its answer to the backpay specification and the General Counsel's motion to strike, generally denied various allegations of the specification, without setting forth alternative formulas or figures for any of the backpay computations and thus the denials were not sufficient under Section 102.54(b) to raise any issues warranting a hearing. Since this data is within Respondent's knowledge its failure to set forth fully its position as to the applicable premises or to furnish appropriate supporting figures is contrary to the specificity requirements of Section 102.54(b) of the Board's Rules and Regulations. Accordingly, we shall strike Respondent's answer to those allegations of the backpay specification and, accordingly, deem such allegations to be admitted as true.

Respondent, however, alleges that several of the discriminatees named in Appendix A of the Board's Order in 234 NLRB 698 did not diligently seek to mitigate losses during the backpay period, that the total figures offered by the General Counsel should not be accepted and that, in the alternative, a hearing is at least in order regarding these alleged interim earnings. Inasmuch as the Board has held that a

¹ 234 NLRB 698.

general denial is sufficient to place interim earnings into issue as the information is generally not within the knowledge of Respondent,² we find Respondent's general assertion of the discriminatees' failure to seek and retain available interim employment to be sufficient under the Board's Rules and Regulations to put into issue the general question of the interim earnings. We also note that the General Counsel does not oppose Respondent's right to pursue this avenue at the hearing. Therefore, we shall grant only the General Counsel's motion to strike Respondent's answer to the backpay specification as to the gross backpay computations.

Accordingly, we shall order a hearing limited to the determination of the discriminatees' interim earnings including the availability to discriminatees

of interim employment, and the discriminatees' failure to seek and/or retain such interim employment.

ORDER

It is hereby ordered that the General Counsel's motion to strike Respondent's answer to the backpay specification as to the gross backpay computations and Summary Judgment as to the gross backpay computations is hereby granted.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 18, for the purpose of arranging a hearing before an administrative law judge, limiting such proceeding to the determination of the availability of interim employment, the discriminatees' failure to seek or retain interim employment, and the interim earnings of employees listed in Appendix A to the Board's Decision and Order in 234 NLRB 698, and that the Regional Director be, and he hereby is, authorized to issue notice thereof.

² *Dews Construction Corp., a subsidiary of The Aspin Group, Inc.*, 246 NLRB 946 (1979).